

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Richard M. Kipperman,

Plaintiff,

v.

Onex Corporation, et al.,

Defendants.

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CIVIL ACTION NO.
1:05-cv-01242-JOF

OPINION & ORDER

This matter is before the court on Defendants’ motion to preclude Plaintiff from seeking to prove newly-alleged transfers [587].

Plaintiff seeks to introduce evidence of 236 transmittals of funds. Defendants move to block this evidence arguing that these transmittals had not been identified in the complaint. Plaintiff responds that only 43 of the 236 were actual transfers that Plaintiff sought to avoid. The remainder were “relevant transfers” which would provide context at trial. The parties argued this motion before the court at the March 26, 2009, hearing. At that time, the court made a number of comments concerning how a trial would or would not proceed with respect to the 236 transfers. *See* Hearing Transcript, at 3-5. In a minute order dated March 26, 2009, the court stated that it would “issue an order at a later date regarding

whether the 43 transfers Plaintiff seeks to set aside have been sufficiently pled as part of the case.” The 43 transfers are transfers made by Debtors to accomplish the ABCO, Republic, and Jannock Acquisitions.

To the extent any more needs to be said concerning this motion at this stage in the litigation, the court notes, as the parties are aware, that in an order dated August 13, 2009, the court granted in part and denied in part the parties’ cross-motions for summary judgment. The issue of the 43 additional transfers is now moot because the court has held (1) that issues relating to the ABCO acquisition fall outside the statute of limitations and (2) summary judgment was granted on the Republic and Jannock acquisitions because Plaintiff could not show insolvency or whether the Debtor received reasonably equivalent value.

Therefore, the court DENIES AS MOOT Defendants’ motion to preclude Plaintiff from seeking to prove newly-alleged transfers [587].

IT IS SO ORDERED this 15th day of September 2009.

/s/ J. Owen Forrester
J. OWEN FORRESTER
SENIOR UNITED STATES DISTRICT JUDGE